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Viewing cable 08BOGOTA3653, SUPREME COURT RULES EX-MEMBERS OF CONGRESS REMAIN

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Reference ID	Created	Released	Classification	Origin
08BOGOTA3653	2008-10-02 17:30	2011-08-30 01:44	CONFIDENTIAL	Embassy Bogota

Appears in these articles:

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PP RUEHWEB

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C O N F I D E N T I A L BOGOTA 003653

SIPDIS

E.O. 12958: DECL: 09/24/2018
TAGS: [PGOV](#) [PREL](#) [PTER](#) [PHUM](#) [KJUS](#) [CO](#)
SUBJECT: SUPREME COURT RULES EX-MEMBERS OF CONGRESS REMAIN
UNDER FISCALIA JURISDICTION

Classified By: Political Counselor John Creamer
Reasons 1.4 (b and d)

SUMMARY

1. (C) Colombia's Supreme Court opted on September 18 not to expand its powers to investigate members of Congress suspected of paramilitary ties to include ex-legislators. Under current rules, the Court prosecutes and tries sitting senators and representatives; the Prosecutor General's Office (Fiscalia) prosecutes former members. Supreme Court auxiliary magistrate Ivan Velasquez told us the Fiscalía is less aggressive than the Court in investigating parapolitical ties, but an examination of the numbers in parapolitical cases does not support this view. Velasquez said the Court expects to charge additional legislators in the near future, including three leading legislators from Valle de Cauca. End summary.

COURT BACKS AWAY FROM CONFLICT

2. (C) The Supreme Court opted on September 18 to retain the current rules--which were set by the Court during the Samper scandal in the 1990s--for investigating senators and members of Congress in the parapolitical cases. Presently, the Court investigates, prosecutes, and judges sitting members; former members (including those who resign in response to prosecution) enter the ordinary justice system and are investigated and prosecuted by the Fiscalía. Lower courts determine guilt or innocence. The media had speculated that the Court would reclaim the right to investigate and adjudicate all parapolitical cases involving legislators--including those already in the hands of the Fiscalía--due to concerns that defendants who resigned their seats fared better under the Fiscalía. Auxiliary Supreme Court Magistrate Ivan Velasquez, the lead investigator in the parapolitical scandal, told us on September 22 that the Fiscalía was more susceptible to political pressure and corruption than the Supreme Court.

3. (C) House President German Varon and Liberal Guillermo Rivera told us the 5-4 decision represented a conscious move by some members of the Court to step back from the recent conflict between the Court and Uribe. Representative Carlos Piedrahita told us Supreme Court Magistrate Leonidas Bustos--the swing vote in the decision--changed his vote to maintain the status quo. Bustos reportedly wanted to avoid feeding the public perception of a "declaration of war" by the Court against the executive.

FISCALIA NO EASIER THAN COURT ON PARAPOLITICIANS

4. (C) A close examination of the 70 cases of paramilitary-linked politicians shows that defendants who resign their seats do not receive softer treatment from the Fiscalía than from the Supreme Court. Of the six former congressmen or senators who have been sentenced in parapolitical cases so far, two pleaded guilty under Fiscalía prosecution, one was convicted under Fiscalía prosecution, and three were convicted by the Supreme Court. Of the six former or current congressional representatives who have been acquitted, three were cleared under the ordinary justice system and three under the Supreme Court. All twelve represented parties in the president's Congressional coalition, suggesting that partisan politics did not influence the Fiscalía's prosecution of cases.

5. (U) Similarly, both the Fiscalía and the Court have made ample use of their legal authority to imprison suspects despite criticisms of the Court by Uribe allies for using this harsh--if legal--practice. As of late September, the Fiscalía has ordered fifteen into preventive detention; the

Court has has ordered ten. In addition, only four of the thirty-three members of Congress under investigation but not in jail have resigned their seats--indicating that many defendants do not perceive any benefit from having their cases prosecuted by the Fiscalia instead of the Court.

COURT VIEWS

16. (C) Velasquez defended the Court against charges of political bias, rejecting claims that it conducts secret investigations and does not allow suspects the opportunity to mount a defense. He agreed that the Court's heavy reliance on witness testimony provided by former paramilitary members is a weakness, but said threats and violence against potential sources of physical evidence have made this inevitable. The Court recognizes that its credibility is at stake, and is careful to develop multiple witnesses before bringing charges. In response to executive claims that the Court is moving slowly on the FARC political cases, Velasquez noted that the FARC cases only started in June. By contrast the court began the parapolitical investigations in early 2005, and brought the first cases to trial in late 2006.

CONFLICTS AND INVESTIGATIONS CONTINUE

18. (C) The Court's decision avoided another flare-up between Uribe and the Court, but the conflict is likely to continue. Velasquez said the parapolitical scandal will expand further, noting that the Court expects to bring charges against powerful Valle de Cauca and Convergencia Ciudadana Senator Juan Carlos Martinez in the near future. Martinez is close to Valle Governor Juan Carlos Abadia. Extradited paramilitary leader Salvatore Mancuso also testified on September 25 before Colombia's Supreme Court (via video link from the United States) about para ties to politicians in Cordoba and Sucre. Varon and Rivera agreed the continuing investigations will provoke more Uribe-Court clashes. Rivera said GOC officials wrongly believe the Supreme Court is biased against them (reftel). They added that Uribe will respond aggressively if Court investigations ensnare more politicians linked to the executive.

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